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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,662

09/05/2003

Vikkie A. Mustad

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25755 7590 01/11/2007
ROSS PRODUCTS DIVISION OF ABBOTT LABORATORIES
DEPARTMENT 108140-DS/1
625 CLEVELAND AVENUE
COLUMBUS, OH 43215-1724

EXAMINER

CARR, DEBORAH D

ART UNIT

PAPER NUMBER

1621

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/656,662	Applicant(s) MUSTAD ET AL.	
	Examiner Deborah D. Carr	Art Unit 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 9-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 16 October 2006 has been entered.
2. Claims 9-45 remain withdrawn as being directed to non elected subject matter.

Response to Arguments

3. Applicant's arguments filed 11 October 2005 have been fully considered but they are not persuasive. The rejection of claims 1-7 under 35 USC§102(b) and claim 8 rejected under 35 USC 112 is maintained.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-7 rejected under 35 U.S.C. 102(a) as being clearly anticipated by US Pub.

2004/0062847.

US Pub.'847 teaches an oil/fat composition containing alpha-linolenic acid, omega-6 fatty acids and omega-9 fatty acids that read on all of the ratios and applicable acids as defined in the dependent claims. See Table 1, col. 3 wherein the amount of fatty acids are as follows: C18:3 n-3 (40.5); C18:1 n-9 (34.5); C18:2 n-6 (14.0), saturated fatty acids (C16:0 & C18:0 - total 10.7).

Applicants' continue to argue while US'847 teaches the fatty acid profile, it does not disclose the fatty acid composition of the diglycerides and monoglycerides in the formulation, including fatty acid ratios, of the overall composition.

US'847 teaches mono, di, and tri-glycerides in the profile of 3 of Table 1 which was referenced in the previous office action contrary to applicants' assertions. The title for Table 1 is "Oil/Fat Composition" indicating an overall total fatty acid content.

While "comprising" is considered an open term, it is noted that the features upon which applicant relies (i.e., di glyceride and triglyceride content) are not recited in the rejected claim(s). There is no requirement for a "total fatty acid composition" only that the ratios of alpha-linolenic acid, omega-6 fatty acids and omega-9 fatty acids are met.

Claim Rejections - 35 USC § 112

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claim 8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants' argue that one of ordinary skill in the art would appreciate that the oil blends listed in claim 8 are the source of the fatty acids recited in claim 1.

While one of ordinary skill in the art could appreciate that the oil blends recited in claim 8 can be the source of the fatty acids of claim 1, one of ordinary skill in the art could also appreciate the fact that a synthetic source could be used wherein synthetically made fatty acids would be blended together to obtain the lipid system of claim 1.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 8 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for lipid oil system wherein the ratios of claim 1 is met by the oil combination

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list on page 9 in Table 1, does not reasonably provide enablement for the lipid system of claim 1 when the oil combination is as recited in this claim. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make/use the invention commensurate in scope with these claims. It is specifically shown in Table 1 that corn oil and high oleic safflower oil is needed to obtain the ratios of claim 1. As currently amended, these two components could be absent and other components present to bring the system up to weight.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-8 recites the limitation "as defined in claim 0" in lines 1. There is insufficient antecedent basis for this limitation in the claims since there is not claim 0

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D. Carr whose telephone number is 571-272-0637.

The examiner can normally be reached on Monday-Friday 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Deborah D. Carr". The signature is fluid and cursive, with the first name "Deborah" and last name "Carr" being the most legible parts.

DEBORAH D. CARR
PRIMARY EXAMINER

ddc